

AMENDMENTS TO THE DRAWINGS

Please substitute sheets 1 and 13 with amended sheets 1 and 13 attached herewith.

Attachment: Replacement Sheets

Appl. No. 10/774,259
Atty. Docket No. 8637C
Amdt. dated January 26, 2006
Reply to Office Action of November 30, 2005
Customer No. 27752

REMARKS

Claim Status

Claims 1-6 and 8-22 are pending in the present application.

Applicants appreciate and acknowledge the mention by the Examiner that claim 10 would be allowable if rewritten in independent form.

Applicants have cancelled claim 7 without prejudice.

Applicants have added independent claim 22 to claim additional subject matter.

Applicants have amended claims 2, 9 and 19 to correct grammatical errors.

Applicants have amended claim 5 to include the features of a hinge line that intersects a longitudinal centerline of an article.

Applicants have amended claim 21 to include the features of a hinge line positioned between an attached portion and a liftable portion wherein the hinge line intersects a longitudinal centerline of a pant like article.

As requested by the Examiner, Applicants have amended the drawings to include reference numeral 47 and 126.

Applicants have amended the specification such that Figs. 4D, 11A and 16D appear in the Brief Description of the Drawings section.

Support for the amendments is found in the specification, claims and/or drawings as filed.

Objection to the Drawings

The drawings have been objected for reasons of record at paragraph 1 of the office action dated 11/30/2005.

Applicants submit that Figs 1 and 13 have been amended and that the amendment overcome the objection.

Objection to the Specification

The specification has been objected for reasons of record at paragraph 2 of the office action dated 11/30/2005.

Applicants submit that the specification has been amended and that the amendment overcomes the objection.

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Objection to the Claims

Claims 2, 9 and 19 have been objected for reasons of record at paragraph 3 of the office action dated 11/30/2005.

Applicants submit that claims 2, 9 and 19 have been amended and that these amendments overcome the objections.

Rejections Under 35 U.S.C. §102(b)

Claims 5-6, 12-14 and 17 have been rejected under 35 U.S.C. §102(b) as being anticipated by EP0786243.

It is well-settled that in order to anticipate a claim, the reference must teach each and every element of the claim. MPEP §2131. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP §2131 citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Claim 5:

Applicants submit that claim 5 has been amended to include the features of a hinge line that intersects a longitudinal centerline of an article. Applicants submit that this amendment overcomes the rejection.

Claim 14:

Applicants traverse the rejection of claim 14 as being anticipated by the '243 reference in view of the following remarks.

Applicants submit that claim 14 includes the features of at least one first fastening element having at least one hinge line positioned between the attached portion and the liftable portion and at least two second fastening elements with retaining elements, the second fastening elements disposed on the opposite side panels so as to be generally

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attachable in a face to face relationship with at least a portion of the liftable portion of at least one first fastening element. (Emphasis supplied)

Applicants respectfully disagree with the Office's interpretation of the scope and content of the '243 reference.

As best understood by Applicants, the '243 reference discloses a pair of fastening tapes 10 and a target tape 11.

Assuming *arguendo* that the two fastening tapes 10 shown in Fig. 1 of the '243 reference equate to the at least two second fastening elements disposed on the opposite side panels of claim 14, Applicants then submit that the '243 does not teach or even remotely suggest the least one first fastening element having at least one hinge line such that the at least two second fastening elements are generally attachable in a face to face relationship with at least a portion of the liftable portion of the at least one first fastening element. (Emphasis supplied)

Since the '243 reference does not teach each and every element as set forth in claim 14, it is Applicants' position that the rejection of claim 14 as being anticipated by the '243 reference was improper.

Reconsideration and withdrawal of the rejections of claims 5-6, 12-14 and 17 are therefore respectfully requested.

Rejections Under 35 USC §103(a)

Claims 1-4, 7-9, 11, 15-16 and 18-21 have been rejected under 35 USC §103(a) for reasons of record at paragraphs 14-28 of the office action dated 11/30/2005.

Applicants traverse the rejections in view of the following remarks.

Claims 1-4:

Claim 1 has been rejected under 35 USC §103(a) as being unpatentable over EP '243 in view of '545 to Kline et al.

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The office action acknowledges that "EP '243 does not expressly show the hinge line being disposed at an angle less than 90 degrees relative to the primary direction of the load bearing."

However, the office action further alleges that "[p]lacing the fastening member at such an angle (i.e. less than 90 degrees) would place the hinge line at the same angle. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the article of EP '243 to include an angle less than 90 degrees as taught by Kline '545 to improve fit and avoid skin marking."

Applicants respectfully disagree.

Applicants remind the Examiner that "[w]hen applying 35 U.S.C. 103, the following tenets of patent law must be adhered to: (1) The claimed invention must be considered as a whole; (2) the reference must be considered as a whole and must suggest the desirability and thus the obviousness of making the contribution; (3) the reference must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention and (4) reasonable expectation of success is the standard with which obviousness is determined." (emphasis added) *Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187, n.5 (Fed. Cir. 1986), MPEP 2141.

As best understood by Applicants, Kline et al. disclose that "[i]t has been found that if a mechanical bond is used to join the engaging component 202 to an element of the absorbent article, alone or in combination with other bonding means, the mechanical bond pattern may affect the strength of the bond between the engaging component 202 and the element to which it is joined, as well as the fastening characteristics of the engaging component 202. Mechanical bonding typically damages at least some of the engaging elements 206 of the engaging component 202, causing some change in the fastening performance of the component. Thus, it is preferred that a mechanical bond pattern is chosen that securely bonds the engaging component 202 to the absorbent article without damaging too many of the engaging elements 206. Suitable results can be achieved by mechanically bonding the engaging component at predetermined locations along at least its longitudinal outer edges 212 in at least its outer region 220.

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In especially preferred embodiments, the bonding pattern includes bonds at or near each corner of the engaging component 202, as shown in FIGS. 6A and B. The central region 218 of the engaging component 202 is preferably generally unaffected by the edge mechanical bonds 210. Examples of acceptable and preferred bond patterns are shown in FIGS. 6A-C. The bonding patterns shown in FIGS. 6A and B are particularly effective in securely joining the engaging component 202 with the element to which it is being bonded while minimizing the impact of the center mechanical bonds 211 on the engaging elements 206, and thus, the engaging component's overall fastening performance. This type of bonding and fastening performance is important for products such as the diaper 20 of the claimed invention." (Emphasis added, see Col 19, lines 8-30)

It is therefore Applicants' position that one of ordinary skill in the art considering the '545 reference as a whole, would have to consider the presence of a bonding pattern all around the longitudinal outer edges of the engaging component.

It appears that such a bonding pattern located on the longitudinal outer edges of the engaging component would prevent any portion of the engaging component to be liftable.

It also appears that with such a bonding pattern, a first fastening element would not include a hinge line.

Consequently, even if one assumes *arguendo* that the '243 reference does disclose an attached portion and a liftable portion, it is Applicants' position that one of ordinary skill in the art would have had no motivation to combine the teachings of the '243 reference to those of Kline et al. since Kline et al. teaches away from a first fastening element including at least one liftable portion.

In addition, the office action alleges that "[p]lacing the fastening member at such an angle (i.e. less than 90 degrees) would place the hinge line at the same angle."

Applicants respectfully disagree.

As best understood by Applicants, Kline et al. disclose that the outer edges 212 can be at an angle. However, Applicants submit that this does not necessarily mean that a hinge itself would necessarily have the same angle as the outer edge.

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In view of the foregoing, it is Applicants' position that the office action has failed to establish a *prima facie case* of obviousness of claim 1.

Claims 7-9, 11 and 21:

At the outset, Applicants submit that claim 7 has been cancelled without prejudice therefore mooted the rejection of claim 7.

Applicants submit that claims 8-9 and 11 depend on claim 5, which has been amended to include the features of a hinge line that intersects a longitudinal centerline of the article.

Applicants submit that claim 21 has been amended to include the features of a hinge line positioned between an attached portion and a liftable portion wherein the hinge line intersects a longitudinal centerline of a pant like article.

For the sake of brevity, Applicants submit that the arguments previously presented in support of patentability of claim 1 also traverse to the rejection of now amended claim 5 and its depending claims, as well as claim 21.

Claims 15-16 and 18-20:

At the outset, Applicants submit that claims 15-16 and 18-20 all depend on claim 14.

Applicants previously demonstrated that the rejection of claim 14 under 35 U.S.C. § 102(b), as being anticipated by the '243 reference, was improper.

Consequently, Applicants submit that the Office has the burden to make a proper *prima facie* case of obviousness of claim 14 before it can allege that any of its depending claims are also unpatentable under 35 U.S.C. § 103(a).

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Double Patenting

Claims 1-21 have been rejected under the judicially created doctrine of obviousness type double patenting for reasons of record at paragraphs 31 and 32 of the office action dated 11/30/2005.

Applicants are submitting a Terminal Disclaimer (attached herewith) therefore overcoming the obviousness-type double patenting rejection.

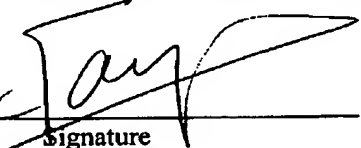
Conclusion

In view of the previous amendments and remarks, it is submitted that all the claims are in condition for allowance. Early and favorable action on all claims is therefore respectfully requested.

If the next action is other than to allow the claims, the favor of a telephonic interview is requested with the undersigned representative.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By 
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